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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES MEVORAH, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

WELLS FARGO HOME MORTGAGE,
INC., a division of WELLS FARGO
BANK, NATIONAL ASSOCIATION, and
DOES 1 through 50, inclusive,

Defendants.

Case No. C 05-01175 MHP
C 05-02722 MHP
C 06-01991 MHP

**UPDATED JOINT CASE CONFERENCE
MANAGEMENT STATEMENT**

Date: June 26, 2006
Time: 3:00 p.m.
Dept: 15

Before The Honorable Marilyn Hall Patel

Pursuant to the Clerk's Notice issued in the above-captioned matter, the parties in *Mevorah v. Wells Fargo Home Mortgage, Inc.*, Case No. C-05-01175 MHP, *Perez v. Wells Fargo Mortgage Company*, Case No. C-05-02722 MHP, and *Miles v. Wells Fargo Mortgage Company*, Case No. C 06-01991 MHP, hereby provide this Updated Joint Case Management Conference Statement reflecting the status of this proceeding since the last Case Management Conference.

A. FACTS AND EVENTS UNDERLYING THE ACTIONS.

1. Actions Pending.

Presently before the Court are three putative class actions against Defendant Wells Fargo Home Mortgage ("Wells Fargo"), proposing to represent all Home Mortgage Consultants ("HMCs") employed in California and/or all HMCs nationwide. In addition, an action styled *Laura Strickler v. Wells Fargo Bank* was filed May 16, 2006 in California Superior Court in San Diego County, alleging California Labor Code overtime violations against Wells Fargo on behalf of HMCs.

The *Mevorah* Action, which was removed to this Court on March 22, 2005, purports to be a collective action and class action representing all Wells Fargo HMCs in California. See *Mevorah* Complaint ¶ 5. The *Mevorah* plaintiff alleges that Wells Fargo did not pay its HMCs

1 overtime in alleged violation of the FLSA and California wage-and-hour law, as well as the
 2 California Unfair Competition Law ("UCL"). *See Mevorah* Complaint ¶¶ 13, 18, 24.

3 The *Perez* Action, which was assigned to this Court on August 18, 2005, purports to
 4 be a collective action representing all Wells Fargo HMCs nationwide. *See Perez* Complaint ¶ 28.
 5 The *Perez* plaintiff alleges that Wells Fargo failed to pay its HMCs overtime in alleged violation of
 6 the FLSA and the UCL. *See Perez* Complaint ¶¶ 36-54. On November 21, 2005, the Court
 7 tentatively coordinated the *Mevorah* and *Perez* Actions.

8 On or about December 19, 2005, the action entitled *Perry v. Wells Fargo Home*
 9 *Mortgage*, Case No. 05-890-DRH, was filed in the Southern District of Illinois as a collective action
 10 also purporting to represent all Wells Fargo HMCs nationwide. The *Perry* Complaint has one cause
 11 of action, which is for failure to pay overtime in violation of the FLSA. *See Perry* Complaint
 12 ¶¶ 17-26.

13 On March 15, 2006 an action was filed in this District, titled *Brenda Miles v. Wells*
 14 *Fargo Mortgage Company*, Case No. 3:06-CV-01991 MEJ ("Miles lawsuit"). The *Miles* lawsuit
 15 purports to represent all Wells Fargo HMC's employed by Wells Fargo who allegedly were not paid
 16 "overtime" wages. Plaintiff Miles also filed a notice of related case on March 15, 2006. Wells
 17 Fargo waived service of process on June 1, 2006. Wells Fargo filed a notice of related case as to
 18 *Miles* June 5, 2006. This Court entered an order relating the *Miles* Action on June 7, 2006 and, on
 19 June 7, 2006, stayed all discovery and vacated pending dates, and set a Case Management
 20 Conference for June 26, 2006

21 On May 16, 2006 an action was filed in California Superior Court in San Diego
 22 County titled *Laura Strickler v. Wells Fargo Bank, N.A.*, Case No. GINO5237 ("Strickler lawsuit").
 23 The *Strickler* lawsuit alleges, among other causes of action, that "loan specialists" (*i.e.*, HMCs)
 24 employed by WFHM were not paid overtime wages.

25 2. Motions Pending.

26 On November 17, 2005, this Court issued an Order that, *inter alia*, prohibited the
 27 parties from contacting members of the putative class without its permission. *See* Order 8:18 22.
 28

On December 14, 2005, Wells Fargo appealed the November 17 Order to the Ninth Circuit, which has ordered that the opening brief be filed June 12, 2006, which Wells Fargo has filed.

On January 27, 2006, the Perry plaintiff filed a Motion for Conditional Collective Action Certification Pursuant to 29 U.S.C. § 216(b).

In March 2006 Plaintiff Perez filed a Motion with The Multi-district Litigation Panel ("MDL Panel") to transfer and consolidate all cases

On May 25, 2006, Wells Fargo filed a Motion to be heard July 12, 2006, to require Plaintiff Perez to remove a website believed to violate this Court's November 17, 2005 Order.

B. PRINCIPAL ISSUES.

The issues on the merits of the litigation remain substantially as identified in previous case management conferences.

C. ALTERNATIVE DISPUTE RESOLUTION.

There are no presently scheduled plans for Alternative Dispute Resolution.

D. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE.

Not consented.

E. DISCLOSURES.

The parties (with the exception of the *Miles* plaintiff) have made initial disclosures pursuant to Civ. L.R. 16-5 and Fed. R. Civ. P. Rule 26, as set forth in previous Case Management Conference Statements. The parties in *Miles* agree to make initial disclosures pursuant to Civ. L.R. 16-5 and Fed. R. Civ. P. Rule 26 within thirty days of the June 26, 2006 Case Status Conference.

F. EARLY FILING OF MOTIONS.

The following significant motions are anticipated.

Mevorah: Plaintiffs in the *Mevorah* action anticipate filing a motion for class certification. That motion had originally been scheduled for filing by June 26, 2006. That date has, however, been suspended as a result of the Court's order staying discovery in this action. Before Plaintiffs can proceed with that motion, they will need to complete some initial pre-certification of

1 discovery. Plaintiffs anticipate filing the class certification motion within thirty days of completion
 2 of such initial discovery. It is also possible that Plaintiffs may need to file a motion to compel
 3 discovery if they are unable to obtain the information that they believe is necessary to proceed with
 4 the class certification motion.

5 **Perez:** Counsel for Plaintiffs and the proposed nationwide class plan to file a Motion
 6 to Allow a Website Describing the Case and an Opposition to Motion to Permanently Remove the
 7 Website. They also plan to file a Motion for Class Certification.

8 **Miles:** Plaintiffs anticipate filing a Motion for Judicial Facilitation of Notice or
 9 similar class certification motion.

10 **Wells Fargo:** Wells Fargo anticipates filing a motion for partial summary judgment
 11 or judgment on the pleadings as to certain legal issues. For example, Wells Fargo will be filing a
 12 motion in all three actions as to whether California's Business & Professions Code sections 17200,
 13 *et seq.*, can be used to extend the FLSA statute of limitations or (with respect to the *Perez* and *Miles*
 14 cases) as to whether there is a basis for Rule 23 certification for HMCs employed and/or outside of
 15 California.

16 **G. DISCOVERY.**

17 The Court has recently stayed all discovery in this matter. Prior to that stay, the Court
 18 ordered that the parties refrain from conducting discovery involving the putative class members,
 19 while the appeal of the order regulating communications with such class members was pending in
 20 the Court of Appeals.

21 The *Mevorah* Plaintiffs believe that even if the Court should choose to continue to
 22 stay discovery from putative class members, discovery should be permitted to continue among the
 23 named parties. Immediately following the lifting of the stay on discovery, Plaintiffs in the *Mevorah*
 24 action plan to recommence discovery of Wells Fargo. Plaintiffs will reschedule the depositions of
 25 Defendant's Rule 30(b)(6) witnesses, which had been set prior to the suspension of discovery.
 26 Assuming an immediate lifting of the stay on discovery, the cut-off date for pre-certification fact
 27 discovery should be August 31, 2006. The parties should disclose experts relating to Class
 28 Certification by July 31, 2006. The parties should disclose rebuttal experts by August 15, 2006.

Discovery regarding experts on class certification issues should be completed by September 15, 2006. The *Mevorah* Plaintiffs believe that an additional Case Management Conference should be held following the Court's ruling on class certification. That ruling will determine the scope of this litigation, and it would be premature to set schedules for post-certification discovery without an understanding of that scope.

Wells Fargo proposes that the parties exchange written discovery requests within the 30 days of the MDL Panel ruling; that all Plaintiffs (California and elsewhere) begin taking depositions of Wells Fargo's 30(b)(6) witnesses in the 30-60 days after the MDL Panel ruling; that Wells Fargo take the deposition of the named Plaintiffs and any other proposed class representatives in the 30-90 days following the MDL Panel ruling; and that the discovery cut-off for fact discovery should be subject to further Case Management Conference Order.

H. PRETRIAL AND TRIAL SCHEDULE.

The parties propose trial setting be deferred until the next Case Management Conference.

I. DATE OF NEXT CASE MANAGEMENT/STATUS CONFERENCE.

An additional Case Management Conference should be scheduled for late September 2006.

J. OTHER MATTERS.

None.

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